

PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of

KOMATSU, SHIGEO, et al.

Appln. No.: 09/582,868

Group Art Unit: To be determined

Filed: July 6, 2000

Examiner: To be determined

For: NONAQUEOUS SECONDARY ELECTROLYTIC BATTERY

DECLARATION OF TERRANCE J. WIKBERG UNDER 37 C.F.R. § 1.47(a)

Assistant Commissioner for Patents
Washington, D.C. 20231

Sir:

I, Terrance J. Wikberg, hereby declare and state the following:

1. I am employed as an attorney by Sughrue, Mion, Zinn, Macpeak & Seas, PLLC ("SMZMS"), patent counsel for Japan Storage Battery Co., Ltd. ("JSB") employer of all co-inventors, except for Mr. Shigeo Komatsu, and entitled to assignment of the above referenced application.

2. I was appointed by Mr. Darryl Mexic, the principal attorney in the prosecution of the above referenced application, to try and obtain the signatures of Messrs. Hiroshi Nakahara, Mikito Nagata and Hiroyuki Yumoto on the Declaration and Power of Attorney and Assignment to be filed in the above referenced case.

3. To the best of my knowledge, Mr. Nagata's last known address and phone number are:

c/o Quallion, LLC
28640 Avenue Stanford
Suite 100
Valencia, CA 91355
USA
(661) 775-3985

4. To the best of my knowledge, Mr. Nakahara's last known address and phone number are:

c/o Quallion, LLC
28640 Avenue Stanford
Suite 100
Valencia, CA 91355
USA
(661) 775-3985

5. To the best of my knowledge, Mr. Yumoto's last known address and phone number are:

c/o Quallion, LLC
28640 Avenue Stanford
Suite 100
Valencia, CA 91355
USA
(661) 775-3985

6. On November 22, 2000, I mailed a copy of the application papers for the above-identified application, by certified mail to Mr. Nagata, at the above last known address, asking him to execute a Declaration and Power of Attorney and Assignment. A copy of the letter sent to Mr. Nagata is attached as Exhibit A.

7. On December 6, 2000, I received a communication from Mr. Nagata, indicating that he did receive the application papers. In his communication, Mr. Nagata claims to have been "abused and harassed" by JSB, and questions whether he has any "obligation" to sign the application documents, in the present application. A copy of the communication from Mr. Nagata is attached as Exhibit B.

8. On December 5, 2000, I mailed copies of the application papers for the above-identified application by certified mail to Mr. Nakahara and Mr. Yumoto, at the above last known addresses, asking them to execute a Declaration and Power of Attorney and Assignment. Copies of the letters sent to Mr. Yumoto and Mr. Nakahara are attached as Exhibits C and D.

9. On December 14, 2000, I received the certified mail return receipts from the United States Post Office, acknowledging that on December 8, 2000 the above documents were delivered to Mr. Nakahara and Mr. Yumoto, at the addresses shown above. Copies of the certified mail return receipts are attached as Exhibits E and F.

10. On December 24, 2000, I received communications from both Mr. Yumoto and from Mr. Nakahara, indicating that they did receive the application papers. Mr. Yumoto indicated that he is unwilling to sign the application documents because of alleged harassment by JSB. Mr. Nakahara has also indicated his reluctance to sign the Declaration and Power of Attorney and Assignment due to alleged harassment by JSB. A copy of the communication from Mr. Yumoto is attached as Exhibit G, and a copy of the communication from Mr. Nakahara is attached as Exhibit H.

11. I have called Mr. Nagata, at the above phone number on November 21, 22, and 29, 2000, and on December 5 and 6, 2000 requesting Mr. Nagata review the application materials and execute the Declaration and Power of Attorney and Assignment. To date Mr. Nagata has not returned nor acknowledged my calls.

12. I have called Mr. Yumoto and Mr. Nakahara, at the above phone numbers on December 5 and 6, 2000 requesting their review of the application papers and that they execute the Declaration and Power of Attorney and Assignment. To date neither Mr. Yumoto nor Mr. Nakahara have returned my calls.

13. On December 22, 2000, I received three copies of a letter written by Dr. Keiji Kondo, a registered Japanese attorney of the Fukudo & Kondo Law Firm, Tokyo Japan, providing JSB with his opinion regarding JSB's rights to the present invention, along with letters from Mr. Toshiaki Nakano, General Manager of JSB's Intellectual Property Office, written to Messrs. Nagata, Yumoto and Nakahara. Copies of these letters can be found as Exhibits F, G, H and I, respectively, in the Declaration of Akinori Okura.

14. On December 28, 2000, I sent the above referenced letters to Messrs. Nagata, Yumoto and Nakahara, via certified mail, at the above addresses, asking them to sign and return the Declarations and Powers of Attorney and Assignments by January 10, 2001. Copies of the letters sent to Messrs. Nagata, Yumoto and Nakahara are attached as Exhibits I, J and K, respectively.

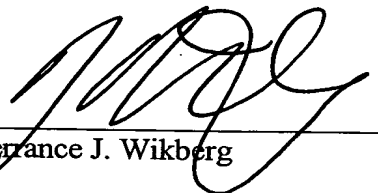
15. On January 8, 2001, I received the certified mail return receipts from the United States Post Office, acknowledging that on January 5, 2001 the above documents were delivered to Messrs. Nagata, Yumoto and Nakahara at the addresses shown above. Copies of the certified mail return receipts are attached as Exhibits L, M and N, respectively.

16. I have not received any executed Assignments or Declarations and Powers of Attorney from any of the inventors identified above.

17. Accordingly, after diligent effort, I was unable to obtain the signatures of Mr. Nagata, Mr. Nakahara, and Mr. Yumoto.

I hereby declare further that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Date: 1/25/01


Terrance J. Wikberg

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For: NONAQUEOUS SECONDARY ELECTROLYTIC BATTERY

DECLARATION OF AKINORI OKURA UNDER 37 C.F.R. § 1.47(a)

Assistant Commissioner for Patents
Washington, D.C. 20231

Sir:

I, Akinori Okura, hereby declare and state the following:

1. I am employed by Japan Storage Battery Co., Ltd. ("JSB") the Assignee of the above-identified application, and I am a member of the Intellectual Property Office at JSB, at JSB's Corporate R & D Center.
2. I am familiar with the above referenced application, and I am aware that the invention disclosed in the above referenced application was jointly invented by Messrs. Shigeo Komatsu, Hiroshi Mukai, Tetsuya Murai, Shinya Kitano, Mikio Okada, Minoru Mizutani, Hiroshi Nakahara, Mikito Nagata, and Hiroyuki Yumoto.
3. At the time the invention, in the above referenced application, was made Messrs. Mukai, Murai, Kitano, Okada, Mizutani, Nakahara, Nagata, and Yumoto were employed by JSB,

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and Mr. Komatsu was employed by JSB until January 31, 1999, and GS-Melcotec Co., Ltd. since February 1, 1999.

4. The above referenced application is the entry into the U.S. National Stage of the PCT International Application No. PCT/JP99/06135 filed on November 4, 1999, and claims priority from Japanese Patent Application Nos. Hei. 10-315967 filed November 6, 1998, Hei. 10-344976 filed December 4, 1998, Hei. 11-085155, Hei. 11-085208, and Hei. 11-085171 filed March 29, 1999 by JSB, and Japanese Patent Application Nos. Hei. 11-085270 and Hei. 11-086977 filed March 29, 1999, and Hei. 11-088251, Hei. 11-088599, and Hei. 11-088072 filed March 30, 1999 by JSB and GS-Melcotec Co., Ltd.

5. Messrs. Nakahara, Nagata and Yumoto are co-inventors of the above Japanese Patent Application Nos. Hei. 11-085155, Hei. 11-085208 and Hei. 11-085171.

6. Messrs. Nakahara, Nagata and Yumoto signed the required Power of Attorney forms for JSB's Japanese Patent Attorney to allow JSB to file the PCT International Application No. PCT/JP99/06135 in the Japanese Government Patent Office.

7. I have attempted, unsuccessfully, to obtain the signatures of Messrs. Nakahara, Nagata and Yumoto on the Declaration and Power of Attorney and Assignment to be filed with the present U.S. application, as required by the United States Patent and Trademark Office.

8. To the best of my knowledge, Mr. Nagata's last known address in Japan was:

33-4, Kujominami 2, Nishi-ku, Osaka-shi, Osaka
550-0025 JAPAN

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9. To the best of my knowledge, Mr. Nakahara's last known address in Japan was:

c/o Murata
17-12, Takenodai 5-chome, Nish-ku, Kobe-shi, Hyogo
651-2274 JAPAN
10. To the best of my knowledge, Mr. Yumoto's last known address in Japan was:

22-301, Doriimuhaitsu, 1403, Matanocho, Totsuka-ku,
Yokohama-shi, Kanagawa 245-0066 JAPAN
11. Mr. Nagata, Mr. Nakahara, and Mr. Yumoto are no longer employed by JSB.
12. Currently, there is a legal dispute between JSB and Messrs. Nagata, Nakahara and Yumoto in Japan.
13. On August 25, 2000, I sent a request via Japanese content-certified mail to Mr. Nagata, Mr. Nakahara, and Mr. Yumoto, at their respective last known Japanese addresses, asking them to execute a Declaration and Power of Attorney and an Assignment. A Copy of each of the letters (along with English translations) are attached as Exhibits A, B and C.
14. On August 28, 2000, the notice of certified mail was delivered to Mr. Nakahara, but he was not at home. Mr. Nakahara did not pick up the above certified mail from the post office during the certified mail retention period, and the above documents were returned to JSB on September 7, 2000 by the post office.
15. On August 26, 2000, the notice of certified mail was delivered to Mr. Nagata, but he was not at home. Mr. Nagata did not pick up the above certified mail from the post office

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during the certified mail retention period, and the above documents were returned to JSB on September 5, 2000 by the post office.

16. On August 28, 2000, the notice of certified mail was delivered to Mr. Yumoto, but he was not at home. On September 1, 2000, the notice of certified mail was re-delivered but Mr. Yumoto refused to receive the certified mail documents. Mr. Yumoto did not pick up the above certified mail from the post office during the certified mail retention period, and the above documents were returned to JSB on September 4, 2000 by the post office.

17. Subsequent to the above efforts, I have learned that Mr. Nagata is now residing in the United States and is employed at Quallion, LLC, 28640 Avenue Stanford, Suite 100, Valencia, California 91355, phone (661) 775-3985.

18. I have called Mr. Nagata on November 10 and 16, 2000 to request Mr. Nagata review the application materials and execute the Declaration and Power of Attorney and Assignment. To date Mr. Nagata has not returned nor acknowledged my calls.

19. I have called Messrs. Yumoto and Nakahara, on November 7, 9, and 13, 2000, to request Messrs. Yumoto and Nakahara review the application materials and execute the Declaration and Power of Attorneys and Assignments. To date Messrs. Yumoto and Nakahara have not returned nor acknowledged my calls.

20. On November 27, 2000, I received a letter from Mr. Nagata stating that he did not wish to cooperate with JSB, by signing the required application documents, because of the

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pending legal action between Mr. Nagata and JSB, in Japan. A copy of Mr. Nagata's letter, with an English translation, is attached as Exhibit D.

21. On November 27, 2000, I received a letter from Mr. Yumoto stating that he did not wish to cooperate with JSB, by signing the required application documents, because of the pending legal action between Mr. Yumoto and JSB, in Japan. A copy of Mr. Yumoto's letter, with an English translation, is attached as Exhibit E.

22. Subsequent to the above efforts and events, I have learned that Messrs. Yumoto and Nakahara are now residing in the United States and are employed at Quallion, LLC, 28640 Avenue Stanford, Suite 100, Valencia, California 91355, phone (661) 775-3985.

23. Accordingly, after diligent effort, I was unable to obtain the signatures of Mr. Nagata, Mr. Nakahara, and Mr. Yumoto.

24. JSB, through its agents, asked attorneys Darryl Mexic and Terrance J. Wikberg of Sughrue, Mion, Zinn, Macpeak & Seas, PLLC, who are prosecuting the above referenced application in the United States Patent and Trademark Office, to aid JSB in obtaining the signatures of Messrs. Nakahara, Nagata and Yumoto on the Declaration and Power of Attorney and Assignment to be filed in the above referenced case.

25. On December 15, 2000, JSB obtained the legal opinion of Dr. Keiji Kondo, a registered Japanese attorney of the Fukuda & Kondo Law Firm, Tokyo Japan, providing JSB with his legal opinion regarding JSB's rights to the above referenced invention. A copy of Mr. Kondo's letter is attached as Exhibit F.

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26. On December 20, 2000 copies of Mr. Kondo's opinion, and letters written by Mr. Toshiaki Nakano, General Manager of JSB's Intellectual Property Office, addressed to Messrs. Nagata, Yumoto and Nakahara were sent to Messrs. Mexic and Wikberg, of Sughrue, Mion, Zinn, Macpeak & Seas, and it was requested that Messrs. Mexic and Wikberg forward these letters to the above inventors. In his letter, Mr. Nakano requested the inventors sign the Declarations and Powers of Attorney and Assignments by January 10, 2001, and references Mr. Kondo's opinion as support for this request. Copies of Mr. Nakano's letters to Messrs. Nagata, Yumoto and Nakahara, along with English translations, are attached as Exhibits G, H and I, respectively.

27. As of the date of this Declaration, I have not received any signed Declarations and Powers of Attorney or Assignments from Messrs. Nagata, Yumoto or Nakahara.

I hereby declare further that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Date: Jan. 18, 2001


Akinori Okura